

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #4	CCRB Case #: 201801153	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/07/2018 1:45 AM	Location of Incident: West 191th Street and Audubon Avenue	Precinct: 34	18 Mo. SOL 8/7/2019	EO SOL 8/7/2019	
Date/Time CV Reported Wed, 02/07/2018 2:25 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/12/2018 11:15 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Emilio Pichardo	02099	934062	034 PCT
2. POM Joseph Navarrete	19998	958656	034 PCT
3. POM Christophe Siciliano	13510	957163	034 PCT
4. SGT Hekmatulla Mukhtarzada	03383	949517	034 PCT
5. Officers			034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Martinucci	20408	955140	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Siciliano	Abuse: Police Officer Christophe Siciliano stopped § 87(2)(b)	
B.SGT Hekmatulla Mukhtarzada	Abuse: Sergeant Hekmatulla Mukhtarzada detained § 87(2)(b)	
C.POM Emilio Pichardo	Discourtesy: Police Officer Emilio Pichardo spoke discourteously to § 87(2)(b)	
D.POM Emilio Pichardo	Force: Police Officer Emilio Pichardo used physical force against § 87(2)(b)	
E.POM Joseph Navarrete	Force: Police Officer Joseph Navarrete used physical force against § 87(2)(b)	
F.POM Emilio Pichardo	Force: Police Officer Emilio Pichardo used a chokehold against § 87(2)(b)	
G.POM Emilio Pichardo	Force: Police Officer Emilio Pichardo restricted § 87(2)(b)'s breathing.	
H. Officers	Force: Officers used physical force against § 87(2)(b)	
I. Officers	Force: Officers used physical force against § 87(2)(b)	
	§ 87(4-b), § 87(2)(g)	

Case Summary

On February 7, 2018, Sgt. Hekmatulla Mukhtarzada of the 34th Precinct contacted the IAB Command Center and filed this complaint on behalf of two prisoners, § 87(2)(b) and § 87(2)(b). On February 12, 2018, this complaint was received at the CCRB.

On February 7, 2018, at 1:45 a.m., two officers, identified by the investigation as PO Emilio Pichardo and PO Joseph Navarrete of the 34th Precinct, arrested § 87(2)(b) at the corner of West 191st Street and Audubon Avenue in Manhattan. § 87(2)(b) was with a friend, § 87(2)(b) who was stopped and detained during this incident, but not arrested (**Abuse of Authority: Allegations A and B**, § 87(2)(g)). While effecting § 87(2)(b)'s arrest, PO Pichardo said to § 87(2)(b) "Get your fucking hands on the wall" (**Discourtesy: Allegation C**, § 87(2)(g)). PO Pichardo and PO Navarrete used physical force against § 87(2)(b) in the course of effecting his arrest (**Force: Allegations D and E**, § 87(2)(g)). PO Pichardo placed § 87(2)(b) in a chokehold, which restricted his breathing (**Force: Allegations F and G**, § 87(2)(g)). Later, multiple additional officers, whom § 87(2)(b) was unable to describe and investigation was unable to identify, arrived and punched § 87(2)(b) all over his body (**Force: Allegation H**, § 87(2)(g)). Unidentified officers also punched § 87(2)(b) (**Force: Allegation I**, § 87(2)(g)). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested for § 87(2)(b)

On April 18, 2018, two video recordings of this incident were obtained from IAB. The full videos are located in and can be viewed from Investigation Actions #139 and #140. The video uploaded in IA#139 does not depict this incident. The video uploaded in #140 (BR 14) was embedded and is discussed in greater detail below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Christopher Siciliano stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Sergeant Hekmatulla Mukhtarzada detained § 87(2)(b)

The investigation established the following facts. At the time of the incident, there was an active police impersonation/robbery pattern (BR 28). The first robbery occurred on January 26, 2018, and the second occurred on January 30, 2018. Both robberies occurred very early in the morning. The robberies occurred within a 5-block radius of West 191st Street and Audubon Avenue in Manhattan. On each occasion, two perpetrators were involved.

The perpetrators in the pattern were not identified by name. The pattern did include physical descriptions of two suspects, one of whom was described as a light-skinned Hispanic male in his 40s, approximately 6' tall, roughly 145 pounds, with salt and pepper hair and facial hair. The second suspect was described as a black or dark-skinned Hispanic male, in his 40s, approximately 6' tall, and with a thin build.

It is undisputed that § 87(2)(b) matched the first description, and that PO Pichardo (BR 09) and PO Navarrete (BR 10) observed him and § 87(2)(b) at West 191st Street and Audubon Avenue at 1:45 a.m. on February 7, 2018. PO Pichardo and PO Navarrete both said that they had reviewed video footage of one of the robberies prior to this incident and recognized § 87(2)(b) who walks with a distinctive limp, from it. PO Pichardo and PO Navarrete focused their

attention on stopping § 87(2)(b) § 87(2)(b) was not held until additional officers began to arrive in response to a call for assistance PO Navarette put out via radio. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) (BR 01) described § 87(2)(b) as a light-skinned Hispanic male, roughly 45 years old, roughly 6' tall, between 175 and 180 pounds, with salt and pepper hair and brown eyes. PO Pichardo and PO Navarette both said the video footage of the robbery they reviewed prior to this incident did not clearly depict the second perpetrator. However, according to the Threat, Resistance, and Injury report prepared for § 87(2)(b) by PO Christopher Siciliano (BR 07 and BR 25), § 87(2)(b) is a black or dark-skinned Hispanic male, 49 years old, 6' tall, 175 pounds, bald, with brown eyes. The TRI report also includes a photograph of § 87(2)(b) which confirms this description § 87(2)(g)

The investigation obtained video footage from the incident location (BR 14). However, the video only depicts one segment of the incident, and § 87(2)(b) never appears on the video.

PO Siciliano (BR 11) stated that when he and his partner, PO Daniel Martinucci, arrived at the location, he saw PO Pichardo and PO Navarrete effecting arrest of § 87(2)(b) § 87(2)(b) was standing several feet away, observing. Because PO Siciliano knew from the radio call for assistance that the stop was related to the police impersonation/robbery pattern, because the stop was occurring in the same vicinity and at roughly the same approximately time period covered by the robbery pattern, and because § 87(2)(b) matched the description of the second suspect, PO Siciliano approached § 87(2)(b) and handcuffed him. § 87(2)(b) was compliant. PO Siciliano did not remember what happened to § 87(2)(b) afterwards. He denied transporting § 87(2)(b) to the 34th Precinct stationhouse or processing any paperwork for him.

According to Sgt. Mukhtarzada (BR 08), on February 7, 2018, at 1:45 a.m., he and his operator, PO Robert May, received a radio call for assistance from PO Navarrete, requesting one additional unit to West 191st Street and Audubon Avenue. When Sgt. Mukhtarzada arrived, § 87(2)(b) and § 87(2)(b) had already been handcuffed. Sgt. Mukhtarzada spoke to PO Pichardo, who told him that he and PO Navarrete believed that § 87(2)(b) was one of the males sought regarding the police impersonation robbery pattern. Because § 87(2)(b) was positively identified as one of the suspects, he was with § 87(2)(b) who matched the description of the second suspect, and because they both stopped near where the robberies took place, Sgt. Mukhtarzada decided to bring them both to the 34th Precinct stationhouse. § 87(2)(b) arrived at the stationhouse at 2 a.m. Sgt. Mukhtarzada was later informed by officers from the Police Impersonation Unit that in course of their investigation it was determined that § 87(2)(b) was not involved in any of the robberies. § 87(2)(b)'s arrest was voided and he was released at 3:48 a.m. as per the command log (BR 37). There is no indication that § 87(2)(b) was subjected to interrogation.

Officers may not forcibly stop a person simply because they are seen in the company of another whom the police have probable cause to arrest. People v. McLoyd, 35 Misc. 3d 822 (2012) (BR 34) Under People v. DeBour, 40 N.Y.2d 210 (1976) (BR 33), a police officer has a right to stop a person if the officer has a reasonable suspicion to believe that the subject is committing, has committed, or is about to commit a crime. Similarity between an individual's appearance and that of a wanted suspect will provide reasonable suspicion to effect a stop,

particularly when additional factors – such as temporal or spatial proximity to recent crimes – or other indicia of criminality are present. People v. Reed, 106 A.D.3d 673 (2013) (BR 35) A police officer may have probable cause to arrest a defendant based on the description of the perpetrator and the defendant’s similarity to that description. A description is sufficient when it is detailed and specific enough to enable the police to reasonably conclude that the defendant is the person described. People v. Rose, 72 A.D.3d 1341 (2010) (BR 37) A sufficiently specific description of a perpetrator will provide probable cause despite the passage of time after the crime, particularly when the perpetrator is arrested in the same general vicinity of the crime and at approximately the same hour of the day. People v. Harmon, 293 A.D.2d 303 (2002) (BR 38) A reasonable investigatory detention must be temporary and last no longer than is necessary to confirm or dispel the officer’s suspicions. The methods employed should be the least intrusive reasonably possible. Simply transporting a suspect to another location, even a police station, does not in and of itself require the conclusion that a temporary detention has become an arrest; it is critical to consider how the detainee is treated upon arrival at the destination. Detaining and interrogating a defendant at a police station for more than two hours is unlawful when based on less than probable cause. People v. Robinson, 282 A.D.2d 75 (2001) (BR 36)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: Police Officer Emilio Pichardo spoke discourteously to § 87(2)(b)

Allegation (D) Force: Police Officer Emilio Pichardo used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Joseph Navarrete used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Emilio Pichardo used a chokehold against § 87(2)(b)

Allegation (G) Force: Police Officer Emilio Pichardo restricted § 87(2)(b) **s breathing.**

Allegation (H) Force: Officers used physical force against § 87(2)(b)

It is undisputed that some force was used to effect § 87(2)(b) s arrest. § 87(2)(g)

§ 87(2)(b) (BR 01) stated that after he and § 87(2)(b) were stopped, one of the officers, PO Pichardo, walked up to him and said, “Get your fucking hands on the wall.” § 87(2)(b) turned around and moved approximately two or three feet towards the wall of 510 Audubon Avenue. PO Pichardo grabbed § 87(2)(b) by his left hand, bent it all the way behind his back, then grabbed § 87(2)(b) s right hand and did the same thing. § 87(2)(b) yelled that he was in pain, but denied resisting PO Pichardo in any manner.

PO Pichardo then placed § 87(2)(b) in a chokehold by wrapping his right or left arm around § 87(2)(b) s neck from behind, so that his forearm touched the front of § 87(2)(b) s

throat, applying pressure. This restricted § 87(2)(b)'s breathing. PO Pichardo attempted to bring § 87(2)(b) onto the ground by pushing him down while still holding his arm around § 87(2)(b)'s neck. § 87(2)(b) yelled, "I cannot breathe. I cannot breathe." § 87(2)(b) did not go to the ground. § 87(2)(b) attempted to free himself by wiggling his body and arms.

PO Pichardo continued to hold § 87(2)(b) in this fashion until approximately ten or fifteen additional officers, none of whom § 87(2)(b) could describe, arrived and ran up to § 87(2)(b). § 87(2)(b) fell to the ground, landing face down. § 87(2)(b) could not tell what exactly caused him to fall. These officers then began to kick and punch § 87(2)(b) in his face, ribs, neck, back, shoulders, and legs, causing lacerations to the right side of § 87(2)(b)'s face, forehead, nose, left eye, knees, elbows, and arms. § 87(2)(b) could not distinguish between these officers and could not tell how many amongst the group were involved in kicking and punching him.

§ 87(2)(b)'s medical records (BR 12) indicate that EMS responded to the 34th Precinct stationhouse and found § 87(2)(b) sitting on the bench in the holding cells. § 87(2)(b) complained of pain to his knee, which had a scab. § 87(2)(b) refused to explain to EMS how he sustained this injury. § 87(2)(b) also complained of redness to his left cheek, pain above his left eyebrow, and pain to his right shoulder. EMS noted that § 87(2)(b) had visible injuries of any kind to these areas. § 87(2)(b) had swelling to his left ankle, which he explained to EMS was due to an accident in 2013. § 87(2)(b) told EMS that while being arrested, he was thrown to the ground and elbowed in the face. § 87(2)(b) denied hitting his head on the ground. § 87(2)(b) did not make any other complaints. § 87(2)(b) was then transported to § 87(2)(b) with a chief complaint of left knee, face, and right shoulder pain. While in the hospital, § 87(2)(b) did not provide details as to how he sustained his injuries. An x-ray of § 87(2)(b)'s right shoulder, left knee, and left ankle was performed, revealing no injury.

§ 87(2)(b) was later again brought to § 87(2)(b) (BR 13) in police custody due to heroin/methadone withdrawal. § 87(2)(b) did not make any statements regarding his arrest, nor did he complain of any pain or injury.

The Medical Treatment of Prisoner Form (BR 27) prepared for § 87(2)(b) indicates that he reported methadone/heroin withdrawal. No further complaints of pain or injury are noted in the report. § 87(2)(b)'s arrest photo (BR 06) does not depict any injuries.

As was discussed, the investigation was unable to establish contact with § 87(2)(b) (BR 05).



201801153_20180418_1242_DM.mp4

The video # 201801153_20180418_1242 (BR 14) is in color, but of poor quality and without an audio component. It does not depict PO Pichardo place § 87(2)(b) in a chokehold. Between 00:52 and 1:55 minutes, the video does show some level of struggle between § 87(2)(b), PO Pichardo, and PO Navarrete, during which § 87(2)(b) falls to the ground, but it is unclear how he lands or what causes him to fall. PO Pichardo and PO Navarrete then kneel over § 87(2)(b) covering him from the camera's view with their bodies. While they are on the ground, the struggle continues as § 87(2)(b) moves his legs and turns to his side. It is not clear what PO Pichardo and PO Navarrete are doing to restrain § 87(2)(b). Between 2:01 and 2:24 minutes, multiple additional officers appear on scene on foot coming from various directions. Several officers run to PO Pichardo and PO Navarrete and kneel over § 87(2)(b) covering him, PO Pichardo, and PO Navarrete from the camera's view. In addition, the emergency lights

from the police vehicles obscure the camera's view. At approximately 2:25 minute mark, it seems that officers lift § 87(2)(b) off the ground and walk him away.

PO Pichardo (BR 09) and PO Navarrete (BR 10) provided generally consistent statements. PO Pichardo acknowledged asking § 87(2)(b) to turn around and to place his hands on the wall as he was going to arrest him, but denied saying to him, "Get your fucking hands on the wall." PO Navarrete also denied this.

§ 87(2)(b) initially complied and proceeded to turn around, but then turned back to face the officers. PO Pichardo and PO Navarrete asked § 87(2)(b) several times to turn around and to place his hands on the wall. § 87(2)(b) did not comply. As PO Pichardo and PO Navarrete attempted to grab § 87(2)(b)'s hands to place him in handcuffs, § 87(2)(b) began to flail his arms in front of his body, so that the officers could not hold him. PO Pichardo called for backup due to § 87(2)(b)'s resistance.

PO Pichardo and PO Navarrete then forcibly took § 87(2)(b) to the ground by pulling him down by his arms. § 87(2)(b) landed face down, while PO Navarrete and PO Pichardo landed on to their knees to either side of § 87(2)(b). PO Navarrete then placed one of his knees on § 87(2)(b)'s back to gain his compliance. § 87(2)(b) continued to resist by rolling his body over and trying to get up. PO Pichardo and PO Navarrete then managed to handcuff § 87(2)(b).

Besides forcibly taking § 87(2)(b) to the ground, PO Pichardo and PO Navarrete denied using any other force against him. PO Pichardo and PO Navarrete denied placing § 87(2)(b) in a chokehold by wrapping his arm around his neck, or restricting his breathing, nor did he have any indication that § 87(2)(b)'s breathing was restricted.

After § 87(2)(b) was cuffed, several additional officers arrived. PO Pichardo and PO Navarrete PO Siciliano and Sgt. Mukhtarzada at the scene, but could not provide names of any other officers. PO Pichardo and PO Navarrete both testified that they cuffed § 87(2)(b) before the additional officers arrived, and that none of them punched or kicked § 87(2)(b) or made any physical contact with him during this incident.

The TRI reports (BR 15, BR 16, and B 26) and ISAR report (BR 24) prepared for this incident are consistent with officers' testimonies.

Other officers interviewed, including Sgt. Mukhtarzada (BR 08) and PO Siciliano (BR 11), denied punching § 87(2)(b) or seeing any officers do so. Several other officers, including PO May, PO Martinucci, PO Kevin Falcone and PO Kevin Balsam, were identified via the EVENT (BR 17) and recourse recap log (BR 18) as responding to the scene. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In the initial complaint narrative, Sgt. Mukhtarzada noted that § 87(2)(b) alleged that unspecified officers punched him in his sides and caused a laceration to his elbow.

§ 87(2)(g)

[REDACTED]

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
- PO Joseph Navarrete has been a member-of-service for two years and this is the first CCRB complaint to which he is a subject.
- PO Emilio Pichardo has been a member-of-service for 14 years and has been a subject of three prior CCRB complaints and seven allegations, none of which was substantiated. § 87(2)(b)

§ 87(2)(g)

- PO Christopher Siciliano has been a member-of-service for three years and has been a subject of two prior CCRB complaints and three allegations, none of which was substantiated. § 87(2)(g)
- Sgt. Hekmatulla Mukhtarzada has been a member-of-service for seven years and has been a subject of four prior CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
 - 201710373 involve allegations of discourtesy and other threat. This case is still pending investigation.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to § 87(2)(b)'s arrest.

- § 87(2)(b) § 87(2)(c)
- § 87(2)(b) § 87(2)(c)

Squad No.: 4

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date